

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: :  
NEW YORK SKYLINE, INC., : Chapter 11  
Debtor. : Case No. 09-10181 (SMB)  
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EMPIRE STATE BUILDING COMPANY L.L.C. :  
and EMPIRE STATE BUILDING, INC., :  
Plaintiffs, : Adversary Proceeding  
-against- : Case No. 09-01107 (SMB)  
NEW YORK SKYLINE, INC. :  
Defendant. :  
-----X  
NEW YORK SKYLINE, INC., :  
Plaintiff, : Adversary Proceeding  
-against- : Case No. 09-01145 (SMB)  
EMPIRE STATE BUILDING COMPANY L.L.C., :  
EMPIRE STATE BUILDING, INC. and :  
EMPIRE STATE BUILDING ASSOCIATES :  
L.L.C., :  
Defendants. :  
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**CERTIFICATION OF  
CHARLES A. STEWART, III  
IN OPPOSITION TO MOTION  
FOR SUMMARY JUDGMENT**

CHARLES A. STEWART, III, hereby certifies, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a member of Stewart Occhipinti, LLP, attorneys for New York Skyline, Inc. (“Skyline”). I respectfully submit this certification in opposition the motion for summary judgment of Empire State Building L.L.C., Empire State Building, Inc., and Empire State Building Associates, L.L.C. (collectively, “ESB”).

2. Attached hereto as Exhibit A are true and accurate copies of certain pages from the deposition of Thomas Sullivan.

3. Attached hereto as Exhibit B are true and accurate copies of certain pages from the deposition of Thomas Keltner, Esq.

4. Attached hereto as Exhibit C is a true and accurate copy of an email from Anthony Malkin of Wein Malkin Properties to Thomas Keltner, dated May 29, 2005, marked at the deposition of Thomas Keltner in this matter.

5. Attached hereto as Exhibit D is a true and accurate copy of an email from Stephen Tole to Thomas Keltner, dated June 2, 2005, marked at the deposition of Thomas Keltner in this matter.

6. Attached hereto as Exhibit E are true and accurate copies of certain pages from the deposition of Fredrick Schulman.

7. Attached hereto as Exhibit F is a true and accurate copy of an affidavit of Michael Leeb, sworn to on May 18, 2005.

8. Attached hereto as Exhibit G is a true and accurate copy of a draft letter from Robert Brady of Skyline to Thomas Sullivan of ESB (produced in this litigation by ESB), dated January 26, 2006, marked at the deposition of Thomas Sullivan in this matter.

9. Attached hereto as Exhibit H is a true and accurate copy of Minutes of the Board of Skyline Multimedia, dated June 22, 2007.

10. Attached hereto as Exhibit I are true and accurate copies of certain pages from the deposition of Walter Threadgill.

11. Attached hereto as Exhibit J is a true and accurate copy of the expert report submitted in this action by Maurice Whalen. Mr. Whalen has died during the pendency of this action.

12. Attached hereto as Exhibit K is a true and accurate copy of an email from Jesse Peterman of ESB to Thomas Keltner, marked at Mr. Keltner's deposition.

13. Attached hereto as Exhibit L is a true and accurate copy of an email from Jaimee Pikur of Wein Malkin Properties to James Connors of ESB, with attachments, dated March 10, 2006, marked at Mr. Sullivan's deposition.

14. Attached hereto as Exhibit M is a true and accurate copy of an email from Stephen Tole of ESB to Anthony Malkin, dated November 19, 2004, marked at the deposition of Thomas Sullivan.

15. Attached hereto as Exhibit N is a true and accurate copy of a draft letter from Thomas Sullivan to Walter Threadgill of Skyline (produced by Skyline in this litigation), dated October 26, 2004, marked at the deposition of Thomas Sullivan.

16. Attached hereto as Exhibit O is a true and accurate copy of an email from Robert Zorn of ESB to Thomas Sullivan of ESB, dated October 19, 2004, marked at the deposition of Thomas Sullivan.

17. Attached hereto as Exhibit P is a true and accurate copy of an Associated Press newspaper article dated September 14, 2006.

18. Attached hereto as Exhibit Q is a true and accurate copy of an email from Robert Zorn of ESB to Stephen Tole of ESB, dated May 11, 2005.

19. Attached hereto as Exhibit R is a true and accurate copy of an email from Anthony Malkin to Thomas Sullivan, dated January 10, 2005, marked at Mr. Sullivan's deposition.

20. Attached hereto as Exhibit S are true and accurate copies of three-day demand letters from ESB to Skyline, dated July 15, 2005, November, 2005, April, 10, 2007, March 7, 2008, and September 19, 2008.

21. Attached hereto as Exhibit T is a true and accurate copy of a Notice of Petition for Non-Payment filed by ESB against Skyline in New York County Civil Court, dated December 20, 2005.

22. Attached hereto as Exhibit U is a true and accurate copy of a letter from ESB to Skyline dated February 14, 2006 regarding "Notice of Default under Lease and License."

23. Attached hereto as Exhibit V is a true and accurate copy of a letter from Dean Roberts, counsel for ESB, to Eric Sherman, Esq., counsel for Skyline, dated March 3, 2004 [sic], regarding a previously tendered Notice to Cure. (It seems that the letter was meant to be dated March 3, 2006.)

24. Attached hereto as Exhibit W is a true and accurate copy of an email from Dean Roberts to Eric Sherman, dated June 29, 2006.

25. Attached hereto as Exhibit X is a true and accurate copy of a letter from Dean Roberts to Eric Sherman, dated August 9, 2006.

26. Attached hereto as Exhibit Y is a true and accurate copy of a letter from David Tannenbaum as counsel for ESB to Skyline regarding "Signs and Employees In Front of the Empire State Building" dated November 16, 2006.

27. Attached hereto as Exhibit Z is a true and accurate copy of a letter from James Perkins as legal counsel for Skyline to David Tannenbaum dated December 21, 2006.
28. Attached hereto as Exhibit AA is a true and accurate copy of a letter from David Tannenbaum to James Perkins dated March 30, 2007.
29. Attached hereto as Exhibit BB is a true and accurate copy of a letter from James Perkins to Dean Roberts dated April 13, 2007.
30. Attached hereto as Exhibit CC is a true and accurate copy of a Notice to Cure from James Connors, General Manager of ESB, to Skyline, dated July, 2008.
31. Attached hereto as Exhibit DD is a true and accurate copy of a letter from James Perkins to Don Bernkopf, Controller of Skyline, dated July 25, 2008.
32. Attached hereto as Exhibit EE is a true and accurate copy of a letter from James Perkins to Francine Nisim dated July 31, 2008.
33. Attached hereto as Exhibit FF is a true and accurate copy of an email from Jesse Peterman of ESB to Robert Zorn dated March 13, 2006.
34. Attached hereto as Exhibit GG is a true and accurate copy of an email from James Connors of ESB to Jesse Peterman dated October 12, 2006.
35. Attached hereto as Exhibit HH is a true and accurate copy of an email from Thomas Keltner to Thomas Sullivan and other ESB employees and representatives dated May 31, 2005.
36. Attached hereto as Exhibit II is a true and accurate copy of an email from Thomas Keltner to Peter Malkin and Anthony Malkin dated May 27, 2005.
37. Attached hereto as Exhibit JJ is a true and accurate copy of an internal memorandum from Peter Malkin to Anthony Malkin dated December 19, 2005.

38. Attached hereto as Exhibit KK is a true and accurate copy of an email from Peter Malkin to Anthony Malkin dated February 28, 2006.
39. Attached hereto as Exhibit LL is a true and accurate copy of an email (redacted) from Edward Levy, former Head of Security at ESB, to Jean-Yves Ghazi dated March 25, 2010.
40. Attached hereto as Exhibit MM is a true and accurate copy of an email from Michael Leeb of Skyline to Jean-Yves Ghazi dated June 7, 2010.
41. Attached hereto as Exhibit NN is a true and accurate copy of an email from Peter Malkin to Anthony Malkin dated February 17, 2006.
42. Attached hereto as Exhibit OO is a true and accurate copy of portions of the pages from Associates 10-K dated December 31, 2010.
43. Attached hereto as Exhibit PP is a true and accurate copy of an article from the New York Times dated September 18, 2009 entitled ‘The 30-Minute Interview: Anthony E. Malkin.’
44. Attached hereto as Exhibit QQ is a true and accurate copy of the affidavit of Yaovi Peton, sworn to on June 11, 2011.
45. Attached hereto as Exhibit RR is a true and accurate copy of the Affidavit of Michael Leeb, sworn to on June 15, 2011.
46. Attached hereto as Exhibit SS is a true and accurate copy of the affidavit of Romer Calderon, sworn to on June 11, 2011.
47. Attached hereto as Exhibit TT is a true and accurate copy of the affidavit of Calaif Park, sworn to on June 13, 2011.
48. Attached hereto as Exhibit UU are true and accurate copies of certain pages from the deposition of Donald O’Donnell.

49. Attached hereto as Exhibit VV are true and accurate copies of certain pages from the deposition of Jean-Yves Ghazi.

50. Attached hereto as Exhibit WW are true and accurate copies of certain pages from the deposition of Anthony Malkin.

51. Attached hereto as Exhibit XX is a true and accurate copy of the affidavit of Orville Harris, sworn to on June 13, 2011.

52. Attached hereto as Exhibit YY is a true and accurate copy of Skyline's answer to ESB's counterclaims.

Dated: New York, New York  
August 19, 2011

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/s  
CHARLES A. STEWART, III